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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Brad S. Konia

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12/19/2005

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EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/491,747	KONIA, BRAD S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stefano Karmis	3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment, filed 26 September 2005.

#### ***Status of Claims***

2. Claims 1-22, 26 and 27 are previously presented and are under prosecution in this application.

#### ***Response to Arguments***

3. Applicant's arguments filed 26 September 2005 regarding the rejection of claims 1-22, 26 and 27 under Fisher et al. in view of Borgeson et al. have been fully considered but they are not persuasive.

Applicant's arguments filed 26 September 2005 regarding the 1.131 affidavit are persuasive and therefore Borgeson et al. no longer qualifies as prior art. However upon further review, a new grounds of rejection is established as set forth below.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-3, 9, 11-13, 21, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Brett U.S. Patent 6,907,405 in further view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361.

Regarding claims 1 and 11, Fisher teaches a method and system for processing and transmitting electronic auction information comprising receiving bid management data from a first bidder for managing bidding by the bidder in the auction the received bid management information including a selected position of priority (column 6, lines 31-45); checking for if a second bidder hold the selected position of priority, and checking for whether a first bid from the first bidder exceeds a second bid from a second bidder in an auction for determining continuing

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priority for providing an ongoing service for the first and second bidder, wherein the relative priority for the providing service for the first bidder is dependent on whether the value of the first bid exceeds the value of the second bid, and wherein the relative priority for providing the service for the second bidder is dependent on whether the value of the second bid exceeds the value of the first bid (column 10, lines 6-28 and column 11, lines 21-43); according to the bid management data received from the first bidder, automatically incrementing the first bid to a value exceeding the second bid if the first bid does not exceed the second bid, thereby causing the relative priority for providing service for the second bidder (column 9, lines 18-35); and a database electrically connected to the processor for storing first and second bids (column 6, lines 39-45 and Figure 4); and automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority if the first bid exceeds a value needed to maintain the selected position of priority (column 9, lines 17-35 and Figure 3 and column 12, line 63 thru column 13, line 8). Fisher teaches selecting a bidding position, specifically the highest ranking bid position (column 6, lines 31-45). Fisher checks for whether a first bid is higher than needed to maintain the selected position (in this case, the highest ranking position) of priority the first bidder wishes to maintain in the auction, and if the first bid is higher than needed to maintain the selected position of priority that the first bidder wishes to maintain in the auction, automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority (column 9, lines 17-35 and column 12, line 63 thru column 13, line 8 and Figure 3).

Fisher fails to teach, that the auction has a least two or more positions of priority, and the received bid management data including information for selecting one of the two or more positions of priority that the first bidder wished to maintain in the auction. Brett

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teaches a bid positioning system in which potential buyers bid on priority rights (column 14, lines 18-32). Continuing, Brett teaches checking for whether a first bid from a buyer exceeds a second bid from a second buyer and incrementing or decrementing the bid to maintain the desired position (column 15, lines 7-32). It would have been obvious to one of ordinary skill in the art to modify the proxy bid teaching to gain the highest position as taught by Fisher to include the teachings of Brett and allow proxy position bidding for positions of priority because the auction for the priority is a series of little auctions that make up a bigger auction. For instance, Brett's teaching of bidding on a priority for a certain tee time is analogous to bidding for the 5<sup>th</sup> best tee time, or in essence maintaining 5<sup>th</sup> place in an auction of overall tee times. The bidder is still bidding to win a specific priority right.

Claims 2 and 12, the step of checking and incrementing bids is executed a plurality of times (column 9, lines 18-35).

Claims 3 and 13, the step of checking and incrementing pauses for a period of time between each series of steps (column 9, lines 18-35).

Claims 9 and 21, Fisher fails to teach golf course tee times. Brett teaches a priority auction which teaches bidding on priority rights of tee times (column 23, lines 47 thru column 24, line 26 and Figure 21). It would have been obvious to one of ordinary skill in the art to modify the proxy bid teaching to gain the highest position as taught by Fisher to include the teachings of Brett and allow proxy position bidding for positions of priority because the auction

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for the priority is a series of little auctions that make up a bigger auction. For instance, Brett's teaching of bidding on a priority for a certain tee time is analogous to bidding for the 5<sup>th</sup> best tee time, or in essence maintaining 5<sup>th</sup> place in an auction of overall tee times. The bidder is still bidding to with that priority right.

Claim 26, executing a plurality of times the step of automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority if the first bid exceeds a value needed to maintain the selected position of priority (column 9, lines 17-47 and Figure 3 and Figure 8).

Claim 27, executing a plurality of times the step of automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority if the first bid exceeds a value needed to maintain the selected position of priority (column 9, lines 17-47 and Figure 3 and Figure 8).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 4-8 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Brett U.S. Patent 6,907,405 in further view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361.

Claims 4 and 8, Fisher teaches a method and system for processing and transmitting electronic auction information for purchasing of merchandise. Fisher fails to specify the service customers are bidding on comprises ranking of hypertext links to web pages in search results in an on-line web page search engine. Davis teaches a system and method for ranking of hypertext links to web pages in search results in an on-line web page search engine (column 5, lines 1-34). Therefore it would be obvious to someone of ordinary skill in the art, that the auctioning techniques taught by Fisher and Brett could be modified to include bidding to rank hypertext links to web pages in search results because it is merely a specific type of item or service being auctioned. There is sufficient motivation to combine the teachings of Fisher and Davis, both



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inventors describe systems and methods for performing on-line bidding by a customer for merchandise or a service.

Claims 5 and 15, Davis teaches ranking of a first hypertext link to a first web page for the first bidder is higher then the ranking of a second hypertext link to a second web page for the second bidder if the first bid is higher than the second (column 5, lines 35-52).

Claims 6 and 16, Davis teaches placing bids on a plurality of search terms which may be typed into the search engine by search engine users wherein different ranking is determined for each search term (column 4, lines 10-25).

Claims 7 and 17, Davis teaches ranking of a first hypertext link to a first web page for the first bidder is higher then the ranking of a second hypertext link to a second web page for the second bidder if the first bid is higher than the second for each of the plurality of search terms (column 5, lines 35-52).

Claims 8 and 20, Davis teaches the step of checking and incrementing is executed for a plurality of search engines for a plurality of search terms (column 4, line 10-48).

Claims 18-19, Davis teaches a plurality of servers electrically connected to a network and a plurality of search engines on the plurality of servers (column 7, lines 33-67 and Figure 1).

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5. Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Brett U.S. Patent 6,907,405 in further view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361 in view of Wallman U.S. Patent 6,601,044.

Claims 10 and 22, Fisher teaches a method and system for processing and transmitting electronic auction information for purchasing of merchandise. Fisher fails to specify the service customers are golf course tee-off times and airline reservations. Wallman teaches a system and method for the trading of commodities including and airline reservations (column 19, lines 30-40). Therefore it would be obvious to someone of ordinary skill in the art that the auctioning techniques taught by Fisher and Brett could be modified to include tee-off times and airline reservations as taught by Wallman because it is merely a specific type of item or service being auctioned.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted  
Stefano Karmis  
08 December 2005



HANI M. KAZIMI  
PRIMARY EXAMINER